

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116
RM-8535

To: The Commission

DOCKET FILE COPY ORIGINAL

PETITION FOR RECONSIDERATION

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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1. The American Mobile Telecommunications Association, Inc ("AMTA" or "Association"), in accordance with Section 1.429 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully requests reconsideration of the definition of "covered specialized mobile radio ("SMR") provider" in the Commission's July 2, 1996 First Report and Order in this proceeding.¹ The Association believes that the definition inadvertently encompasses a significant number of SMR licensees that the FCC did not intend to include, and that it does not accurately reflect the Commission's policy position regarding this matter as articulated in the Order.

I. INTRODUCTION.

2. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry.² The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Those that offer any interconnection capability on their systems are classified as Commercial Mobile Radio Service ("CMRS"), rather than Private Mobile Radio Service ("PMRS"). Thus, the Commission's decision to establish a schedule pursuant to which identified segments of the CMRS marketplace, including covered SMR providers, will be required to implement long-term service provider portability has a significant impact on many of the Association's members.

¹ First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116 11 FCC Rcd ____ (rel. July 2, 1996) ("Order").

² These entities had been classified as private carriers prior to the 1993 amendments to the Communications Act. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

II. BACKGROUND.

3. AMTA had not participated in earlier stages of this proceeding because it was not apparent that its members would be affected by the Commission's decisions regarding number portability. The Notice of Proposed Rulemaking in this proceeding focused almost exclusively on the public interest considerations relating to the ability of local exchange telephone subscribers to retain their telephone numbers when changing services, service providers or geographic locations.³ The Notice specifically noted that the Commission was examining issues relating to CMRS providers' interconnection with the public switched network and with one another in another proceeding, and requested information relating to number portability and CMRS only to the extent that wireless service providers offer services in competition with local telephone companies. Notice at ¶ 24. Because none of AMTA's members could reasonably have been characterized as local exchange competitors at that time and few are expected to offer services competitive with the public switched network in the future, the Association was unaware that its members' interests might be affected by the decisions reached herein. However, the FCC's decision to impose number portability requirements on covered SMR providers, and its decision to define that term in such a way as to include a substantial number of existing and prospective SMR operators, have dictated that AMTA seek reconsideration of that aspect of this Order.

³ Notice of Proposed Rulemaking, CC Docket No. 95-116. 10 FCC Rcd 12350 (1995)("Notice").

III. THE FCC SHOULD ADOPT A REFINED DEFINITION OF COVERED SMR.

A. The Current Rule.

4. The Order indicates that the FCC determined to impose a number portability requirement on certain SMRs because "...cellular broadband PCS, and covered specialized mobile radio (SMR) providers (as defined in the First Report and Order in CC Docket 94-54) ...are the CMRS providers that are expected to compete in the local exchange market...." Order at ¶ 155.⁴

5. The First Report and Order in CC Docket No. 94-54 describes that term as intended to include the following sub-categories of SMR licensees:

These "covered SMR providers" include two classes of SMR licensees. First, the resale rule will extend to 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. Second, the rule will cover incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz and 900 MHz SMR service, either by waiver or under Section 90.629 of our rules. Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services.⁵

6. However, the Order in this proceeding also clarifies that it did not adopt a number portability schedule for other categories of CMRS providers, including SMR operators that are not included in the covered SMR provider definition, because:

⁴ AMTA already has filed a Petition for Reconsideration of the definition of covered SMR provider in CC Docket No. 94-54 for reasons essentially identical to those detailed herein. See Petition for Reconsideration of the American Mobile Telecommunications Association, Inc. filed on August 23, 1996

⁵ First Report and Order, CC Docket No. 94-54, 11 FCC Rcd ____ at ¶ 19 (rel. July 12, 1996).

...such services currently will have little competitive impact on competition between providers of wireless telephony service or between wireless and wireline carriers. Because local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration do not compete substantially with cellular and broadband PCS providers, we also exclude them from the number portability requirements we adopt today. Order at ¶ 156.

7. AMTA agrees that SMR systems offering the services described above should be exempt from a number portability requirement. Clearly, they are not competing with cellular and broadband PCS for a mass market, consumer oriented subscriber base for which the wireless unit is perceived as an extension of, and perhaps ultimately a replacement for, the wired telephone instrument.⁶ Instead, these SMR systems typically offer interconnect capability as an ancillary feature to dispatch for particular business or governmental customers that want that option in a single unit.

8. Thus, AMTA agrees with that aspect of the Commission's policy perspective. However, the Association does not agree that the FCC's policy determination is reflected in its covered SMR definition. The definition will encompass a large number of operators that provide precisely the primarily dispatch, business rather than consumer oriented, non-cellular-like configuration the FCC has determined should not be subject to this rule. A more narrowly tailored definition is required to achieve the Commission's own objectives.

9. As currently crafted, the definition appears to include every SMR providing a voice service with any interconnection capability that holds a geographic, as opposed to site-

⁶ In fact, the Commission has already determined specifically that CMRS providers are not local exchange carriers as defined in the Telecommunications Act of 1996 even if they provide telephone exchange and exchange access services. See First Report and Order, CC Docket No. 96-98 at ¶¶ 1004-5 (rel. August 8, 1996).

specific, license, as well as those that are authorized for extended implementation.⁷ AMTA is unaware of any licensees that would be excluded because their service is not "real-time", a limitation that has no obvious applicability in this context. As described more fully below, AMTA would have assumed that the term "switched" was intended to limit the definition to systems with in-system switching capability comparable to that in a cellular or PCS system, a limitation that would more closely approximate the policy analysis underlying this rule. It does not interpret the term simply to mean that the system is interconnected with the public switched network because that condition is also part of the definition and, in any event, is unnecessary since CMRS systems are, by definition, interconnected.⁸ However, that limiting term is included only in the text of the First Report and Order in CC Docket No. 94-54, not in the definition in the rules themselves. Thus, it does not have any exclusionary utility.

10. The result is antithetical to the Commission's intention. For example, the FCC recently conducted an auction for already encumbered 900 MHz SMR spectrum in which it granted geographic licenses based on MTAs. Each winner was awarded the right to operate on ten 12.5 kHz channels, or a total of 250 kHz of spectrum, throughout the MTA, except in those areas in which a co-channel incumbent was already authorized to operate. A number of auction participants, and a significant percentage of successful small business bidders, were incumbents seeking to protect their ongoing operations by acquiring the right to the so-called "white space" in the MTA outside their existing operating areas. These parties had no choice except to acquire

⁷ See 47 C.F.R. §§ 20.3 and 20.12.

⁸ 47 C.F.R. § 332(d).

a geographic license if they wanted to ensure any expansion opportunity on their channels and prevent potential interference from an unrelated co-channel MTA licensee.

11. While their operational appetites might have been for a smaller coverage area, geographic MTA licenses were the only option on the FCC's menu. However, these licensees harbor no illusions about their competitive posture vis-a-vis cellular or broadband PCS, much less their ability to compete with the local telephone company. By comparison with their 250 kHz of capacity, each cellular licensee has 25 MHz of spectrum and PCS operators will enjoy either 10 or 30 MHz. The wireline local exchange network effectively enjoys unlimited capacity. There is no technology that would enable a licensee with 250 kHz of spectrum to deploy a system that would support the channel reuse and mobile handoff capability that enable cellular and PCS operators to target a consumer-oriented, mass market, to say nothing of the subscriber base of a local exchange service. Yet the definition adopted in this Order would classify such systems as covered SMRs if they offered interconnect capability to even one mobile unit. That result is entirely inconsistent with the FCC's express intention.

12. AMTA anticipates that virtually all future SMR licenses, whether in the 800 MHz, 900 MHz, 220 MHz or other bands, will be awarded by auction. It further assumes that these authorizations will be geographic-based since auctions are manageable only when essentially fungible properties are being sold. It is highly unlikely that applicants, including incumbents like those at 900 MHz, will have a choice between a geographic or some less encompassing type of license. In fact, the FCC is actively considering a proposal whereby lower band 800 MHz SMR channels could be licensed and even auctioned on a frequency by frequency basis with a resulting Economic Area ("EA") geographic license. The licensees of such systems, if

interconnected at all, would fall within the current definition of covered SMRs although they would control only 50 kHz of spectrum over a few counties, further excluding areas already covered by incumbents. Again, this would be expressly contrary to the FCC's avowed intention.

13. It is clear that the covered SMR definition inadvertently includes many of the very SMR systems that the FCC intended not to burden with a number portability obligation. AMTA believes that the language refinement suggested below accurately captures that segment of the interconnected SMR industry that could reasonably be classified as viable competition for cellular and broadband PCS, or perhaps even prospectively for local exchange traffic, and only that segment.

B. The Proposed Rule.

14. The Commission has determined that certain SMRs will be capable of competing with cellular and PCS, and may even be able to provide competition to the entrenched local exchange network. Further it has decided that such systems should be defined as "covered" for purposes of these rules. While AMTA believes it is premature to conclude that any SMR system will enjoy the opportunity to provide meaningful competition in the local exchange marketplace, the Association has endeavored to determine what factors distinguish traditional SMR systems from those seeking to compete in the consumer-oriented, CMRS mass wireless market.

15. The Association has identified one feature that, to the best of AMTA's knowledge, is present in all cellular and cellular-like PCS systems, as well as in SMR systems seeking to compete with them. Unlike traditional, local SMR facilities, systems in each of those categories have an in-network switching facility. It is that facility that enables the system to reuse

frequencies dynamically and thereby develop sufficient capacity to accommodate a mass market subscriber base, and to handoff communications between sites seamlessly without manual subscriber intervention.⁹

16. As noted, supra, the FCC already may have identified this switching capability as the appropriate line of demarcation between those SMR systems they intended to classify as covered, and those there were not to be subject to these rules. The text of the First Report and Order in CC Docket No. 94-54 includes the term switched as a definitional feature of a covered SMR provider, but that word was omitted from the rules themselves.

17. Attached hereto as Exhibit A is the Association's proposed revision to the definitions of covered SMR provider and incumbent wide area SMR licensee. Because AMTA recommends use of the phrase "mobile telephone switching facility" in the description of this category, it also has included the definition of that term provided at Bellcore Wireless Interconnection '96. These same proposed revisions have been included in AMTA's recently-filed Petition for Reconsideration in CC Docket No. 94-54.

18. The current covered SMR provider definition does not accurately capture the distinction articulated in the Order between SMR systems that were and were not intended to be subject to the number portability rule. The public interest will not be served if SMR operators

⁹ AMTA notes that some local SMR systems incorporate a PBX-like "switch"; however, this equipment does not enable features such as frequency re-use or seamless handoff. Such systems, the Association believes, should not be included as covered SMR operations.

de-activate or forego the provision of interconnection because they are unwilling or incapable of satisfying this Commission requirement. Therefore, AMTA urges the FCC to modify its definition as proposed herein.

C. An Alternative Solution.

19. Alternatively, if the Commission is unwilling to adopt the revised language detailed above, AMTA requests that the covered SMR definition be modified to apply only to systems serving twenty thousand (20,000) or more subscribers nationwide. That modification would be more consistent with the FCC's intention to include only those SMR systems that are capable of competing with broadband CMRS operators and the wireline network than is the current covered SMR provider definition. It is not the Association's preferred solution because it is not tailored as precisely to reflect the system distinctions identified by the FCC. However, as described herein, it would be preferable to the current definition.¹⁰

20. As the Commission has recognized already in this proceeding, and as noted above, many SMR systems continue to offer a service that is localized, with individual stations providing discrete areas of coverage to subscribers within a particular market. A licensee may own multiple facilities, and customers may have the capability of roaming from station to station through a manual selection process, but the service is not "cellular-like". It does not reuse frequencies and does not permit automatic, seamless handoff.

21. These traditional-type SMR systems are inherently limited in the number of subscribers that can be served in any market. Without channel reuse, their capacity is restricted

¹⁰ The Association notes that the FCC has previously adopted subscriber figures, in the form of wireline "lines", to exempt rural telephone companies from more stringent regulatory requirements in its PCS proceeding.

whether they employ analog or digital technology. A subscriber count of more than twenty thousand units nationwide does not necessarily indicate that the system has adopted a cellular-like system design since an operator might have multiple, totally independent, heavily loaded, traditional facilities.¹¹ Similarly, it does not mean that a mass consumer market is being tapped. However, AMTA believes this cap would allow a very significant number of traditional operators, those the FCC intended to exclude, to be classified as not covered, while retaining covered status for the very largest systems that either currently have or may develop the potential to provide some level of competition for broadband CMRS and local exchange networks.

IV. CONCLUSION.

22. For the reasons described above, AMTA urges the Commission to refine the definition of "covered SMR" as described herein to reflect more accurately the policy objectives articulated in the Order.

¹¹ The Commission should note the newly implemented PCS system in the Baltimore-Washington area is expected to have approximately one hundred thousand (100,000) subscriber units in operation less than a year after service was initiated.

PETITION FOR RECONSIDERATION
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

CC DOCKET NO. 95-116

EXHIBIT A

PROPOSED DEFINITION FOR COVERED SMR SERVICES

Add new definition paragraph to § 20.3

Mobile Telephone Switching Facility. An electronic switching system that is used to terminate mobile stations for purposes of interconnection to each other and to trunks interfacing with the public switched network.

Modify definitions - §§20.3 and 20.12

Incumbent Wide Area SMR Licensees. Licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz service, either by waiver or under Section 90.629 of these rules, and who offer ~~real-time~~ two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network.~~

§ 20.12(a)

This Section is applicable only to providers of Broadband Personal Communications Services (Part 24, Subpart E of this chapter), providers of Cellular Radio Telephone Service (Part 22, Subpart H of this chapter), providers of Specialized Mobile Radio Services in the 800 MHz and 900 MHz bands that hold geographic licenses (included in Part 90, Subpart S of this chapter) and who offer ~~real-time~~ two way interconnected voice service using a mobile telephone switching facility. ~~that is interconnected with the public switched network~~, and Incumbent Wide Area SMR Licensees.

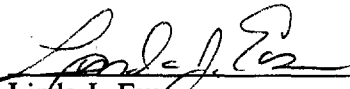
CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 26th day of August, 1996, caused to be mailed a copy of the foregoing Petition for Reconsideration to the following:

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